THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.35 of 2006

22.1.2007

Between:

Kadali Babu Rao, S/o.Venkata Swamy

… Petitioner

AND

The Regional Joint Commissioner, Multi Zone-I, Endowments Department,
Kakinada, East Godavari District
And others

… Respondents

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ORDER:

The petitioner is a cultivating tenant of Sri Veerabhadra Swamy Temple, Nagaram village of Mamidikuduru Mandal in East Godavari District. He filed an application under Rule 3 of A.P. Charitable and Hindu Religious Institutions and Endowments (Lease of Agricultural Lands) Rules, 2003, (the Rules, for brevity), seeking declaration that he is landless poor person entitled to benefit under subsection (2) of Section 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity). By an order dated 22.1.2005, second respondent rejected the claim of the petitioner, observing that he is in occupation of agricultural wetland admeasuring more than Acs.2.50. Aggrieved by the same, petitioner filed appeal under Rule 4 of the Rules before the first respondent. By an order dated 23.7.2005/01.8.2005, first respondent also rejected the claim agreeing with the second respondent.

Learned Counsel for the petitioner submits that the petitioner is cultivating tenant of wetland admeasuring Acs.1.24 in survey No.240 and Acs.2.50 in survey No.236/B belonging to the Temple and that he expressed his willingness to give up his tenancy of wetland admeasuring Acs.2.50 in survey No.236/B, in which event he is certainly a landless poor person as defined in the explanation to subsection (2) of Section 82 of the Act. Learned Counsel would urge that this aspect of the matter was not considered and therefore the order of the first respondent is erroneous.

While dismissing the application of the petitioner, the Assistant Commissioner observed as under.

> As seen from the records, the petitioner is cultivating land admeasuring Acs.1.24 of wetland in R.S.No.240 and

> Acs.2.50 in R.S.No.236/B belongs to Sri veerabhadra Swamy Temple, Nagaram Village, Mamidikuduru Mandal, which is a public religious institution. He owns an extent of Acs.0.39 of wetland as per certificate issued by the Mandal Revenue Officer, Mamidikuduru. Therefore explanation U/s.82(2) of the Act 30/87 read with Amendment Act 28/2002 dt.22.12.2000 defined landless poor "that a person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed 2½ acres of wetland of Acs.5.00 of dry land and whose annual income does not exceed Thousand rupees per mensum or Twelve thousand rupees per annum.
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> Thus on enquiry it is found that the petitioner is not a small farmer as defined under the provisions of the Act and as such he is not entitled to relief as prayed for. Hence, the request of the petitioner is hereby rejected.

As seen from the above, apart from being a tenant of wetland admeasuring Acs.3.74 in two survey numbers, the petitioner was also held to be owner of wetland admeasuring Acs.0.39. In such an event, he cannot be treated as landless poor person as defined in the explanation to subsection (2) of Section 82 of the Act. The submission that he is willing to surrender wetland admeasuring Acs.2.50 and, therefore, he should be treated as landless poor person is also misconceived. Two conditions are to be satisfied for being declared the petitioner as landless poor person. First one is that a person should not possession more than Acs.2.50 of wetland or Acs.5.00 of dry land, as a tenant and as owner. The second condition is that such person should not have monthly income of more than Rs.1,000/-. In a given case, the person may have wetland/dry land not exceeding the permissible limit but still may be deriving income exceeding Rs.1,000/- per month. In such an event, he cannot be treated as landless poor person. In this case, even if the petitioner surrenders the land admeasuring Acs.2.50, still he would be getting more than Rs.1,000/- per month and, therefore, this submission cannot be accepted. Furthermore, for the purpose of determination whether a cultivating tenant is a landless poor person or not for the purpose of Section 82 of the Act, as seen from the language in subsection (2) of Section 82 of the Act, the determination under Rule 3 of the Rules is with reference to the date of filing the application and it does not depend on subsequent event like voluntarily surrendering lease. If such interpretation is taken, it would certainly defeat the object with which Section 82(2) of the Act was amended by legislature.

The writ petition is devoid of merit and is accordingly dismissed. No costs.

(**V.V.S.RAO,J**)

January 22, 2007.
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